



Expert witness in opioids MDL: Fixing crisis will cost \$483 billion

Alison Frankel | April 18, 2019

(Reuters) - Thanks to Purdue Pharma and other defendants in the multidistrict litigation that alleges the drug companies sparked the opioid crisis, we now know how much plaintiffs claim they owe to fix it: more than \$480 billion.

That is the predicted cost, according to Johns Hopkins public health professor Caleb Alexander, of a national abatement plan that would stretch over 10 years. Alexander was cited in summaries of nonpublic reports by plaintiffs' expert witnesses that Purdue, Endo and Mallinckrodt filed last week as part of an emergency motion for more time to depose the witnesses.

The Johns Hopkins prof, according to the April 8 defense filing, estimated that the cost of providing treatment, preventative education, foster care, criminal justice resources and other services to address opioid addiction would be \$452.9 billion.

An additional [emergency filing](#) on Wednesday night, in which defendants asked U.S. District Judge Dan Polster of Cleveland to strike supplemental expert witness material filed after the deadline for their reports, revealed that Alexander has added \$30 billion to his previous estimate. That puts the total cost of dealing with the crisis, according to defendants' disclosures about plaintiffs' marquee expert witness, at \$480 billion.

A second plaintiffs' expert, according to the defense filings, estimated abatement costs in just two Ohio counties, Cuyahoga and Summit, to be \$7.2 billion. Those two counties are plaintiffs in a bellwether trial scheduled to begin in October. The other plaintiffs in the nationwide federal-court case are officials from the state of Ohio and more than 1,000 cities and counties across the country.

Defendants in the MDL contend that the entire theory of the litigation is baseless because their government-regulated prescription opiate products did not cause a crisis fueled by illegal heroin and fentanyl exported by Mexican and Chinese criminal cartels. Wednesday's emergency motion emphasized the enormous financial consequences of plaintiffs' "novel theories of reliance and causation." The motion said plaintiffs' damages and abatement estimates are "unprecedented in American jurisprudence."

Plaintiffs' lawyer Hunter Shkolnik of Napoli Shkolnik, who represents bellwether plaintiff Cuyahoga County, told me the expert witness reports were supposed to remain confidential. "I really don't see a rational, calculated benefit for defendants from disclosing those numbers," he said.

Shkolnik, who declined to confirm his experts' damages estimates, said the defense goal appears to be to delay the October trial by arguing that defendants' lawyers need more time to confront those experts. "This is absurd gamesmanship," Shkolnik said. "They are in scramble mode."

I emailed six liaison defense counsel who signed Wednesday's emergency motion to ask about the disclosure of information from plaintiffs' experts. Purdue counsel Mark Cheffo of Dechert said he was not available to comment. The others did not respond to my email. Alexander, the Johns Hopkins expert witness whose abatement estimate was disclosed by defendants, did not immediately respond to an email request for comment.

Intriguingly, the defendants disclosed correspondence suggesting that the opioid plaintiffs feared the revelation of their experts' damages and abatement estimates would chill settlement talks. In an email to lawyers in the case on the day expert reports were due, court-appointed special master David Cohen noted plaintiffs' "concern that disclosure of expert opinions may affect detrimentally the settlement track." The special master asked defendants for assurances that talks to resolve the litigation "will not suffer negative impact."

After last week's motion asking Judge Polster to allow defendants at least two days to depose plaintiffs' experts, the judge issued an order granting extra time for depositions of the plaintiffs' 10 most important experts. (Plaintiffs have identified 24 experts. Defendants have said they intend to submit more than 90 expert witness reports.) But the judge said quite firmly that he would not entertain any requests to push back the trial date.

“The court has, on more than one occasion, moved the dates for the (bellwether) trial back at the behest of the parties and declines to do so now or at any point in the future,” he wrote. “The deadlines agreed to by the parties and ordered by the court ... will remain in place.”

Judge Polster has said from the beginning of the MDL that he [wants this litigation to settle](#). As you know, Purdue and members of the family that owns the company agreed last month to pay \$270 million to [resolve claims by the state of Oklahoma](#), which is due to go to trial on May 28 against Johnson & Johnson and Teva defendants. The state has said in public hearings that the cost of abating the opioid crisis just in Oklahoma is about \$10 billion.

A Teva representative declined to comment on Oklahoma’s allegations or damages claim. A defense lawyer for J&J’s Janssen Pharmaceuticals, John Sparks, said in an email statement that the company is preparing to defend against Oklahoma’s “baseless and unsubstantiated” claims at the upcoming trial. “Janssen’s actions in the marketing and promotion of its important prescription pain medicines were appropriate and responsible – and that will be made clear in the evidence presented at trial,” he said.

How much will opioid defendants pay to get out from under litigation they consider to be completely unfounded? This latest flurry of filings in the MDL suggests their magic number is going to be less than \$483 billion.

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